IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 849 OF 2004

IN

SUM. SUIT NO. 2791 OF 2004

Purshottam Khemchand
Mirchndani . .. Plaintiff.

vs.

Dattani Foundation
& Anr. .. Defendants.

Mr. Birendra Saraf, Raju Gawde and
Deepali Wakde i/by K. Ashar & Co.
for plaintiff.
Mr. Rajan Kakkara for defendants.

CORAM : S.U. KAMDAR, J.
DATE : 4th October, 2005.

P.C.:

. The present suit is filed for recovery of Rs. 42 lacs with interest on the sum of Rs. 6,30,000/- totalling to Rs. 48,30,000/-. According to the plaintiff the claim arises under a deed of settlement dated 13.11.2003 Exhibit A to the paint. From a perusal of the said deed of settlement it is

clear that originally there was an agreement for allotment of the two properties by the defendants to the plaintiff. However, the same having failed, the said deed of settlement has been arrived at and thereunder it is inter alia provided for refund of Rs. 42 lacs. The said money was to be paid consequently by selling the said properties by the defendants. However clause 8 of the said agreement provides that if the defendants fail to sell the properties within a period of 6 months, then irrespective of the fact that the properties remain unsold the amount will be paid by the defendants to the plaintiff of the sum of Rs. 42 lacs. From a perusal of the said agreement it is clear that there is a present liability of the defendants to pay the amount of Rs. 42 lacs to the plaintiff. In that view of the matter, the contention of the learned counsel for the defendants that the agreement is not for repayment of the amount cannot be accepted. The second contention raised is that the document is not properly stamped. In so far as the said contention is concerned, the said agreement is on a hundred rupees stamp paper and if there is any deficit in the stamps the same can be paid by the plaintiff before the decree is passed. It is also well settled by the judgment of the Supreme Court that the dispute as to the insufficient stamp is essentially between the party and the State and no advantage can be obtained of such deficit stamp by

the contesting parties. The third contention raised by the defendants is that the present suit is not maintainable because in effect if the agreement is for repayment of the amount then the same is a bond. The contention is equally without any merit. The deed of assignment need not be a bond since it provides for repayment of the amount. In that view of the matter, the present summons for judgment is not maintainable. However with a view to giving an opportunity to the defendants to defend the suit, I direct the defendants to deposit a sum of Rs. 40 lacs within a period of four weeks from today failing which the plaintiff will be entitled to decree.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.